

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 19 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EPIFANIA RODRIGUEZ-CABANAS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70756

Agency No. A79-530-369

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 9, 2008 **

Before: REINHARDT, BERZON and M. SMITH, Circuit Judges.

This is a petition for review from the Board of Immigration Appeals’
 (“BIA”) denial of a second motion to reopen an earlier order of removal entered in

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

absentia. We review this decision for an abuse of discretion. *See Ray v. Gonzales*, 439 F.3d 582 (9th Cir. 2006) (citing *Singh v. Ashcroft*, 367 F.3d 1182, 1185 (9th Cir. 2004)). We conclude that the BIA did not abuse its discretion in denying the motion to reopen because petitioner's motion was untimely, and the petitioner has not provided evidence to support an exception to the time limits on motions to reopen. *See* 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). Accordingly, this petition for review is summarily denied in part because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

As to petitioner's request for sua sponte reopening, this court lacks jurisdiction to review the BIA's discretionary decision to deny sua sponte reopening of petitioner's case. *See* 8 C.F.R. § 3.2(a); *Ekimian v. INS*, 303 F.3d 1153 (9th Cir. 2002). We therefore grant respondent's motion to dismiss this petition in part.

The motion for stay of voluntary departure, filed after the departure period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157 (9th Cir. 2004).

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.